



# House of Representatives

General Assembly

**File No. 740**

January Session, 2013

Substitute House Bill No. 6694

*House of Representatives, May 6, 2013*

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING THE INHERITANCE RIGHTS OF A CHILD WHO IS BORN AFTER THE DEATH OF A MARRIED PARENT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. (NEW) (*Effective October 1, 2013*) (a) For purposes of  
2       determining rights to property to be distributed upon the death of a  
3       decedent spouse, a child of the decedent spouse, born after the death  
4       of the decedent spouse, shall be deemed to have been born in the  
5       lifetime of the decedent spouse, and after the execution of all of the  
6       decedent spouse's testamentary instruments, if the child or his or her  
7       representative proves by clear and convincing evidence that:

8       (1) The decedent spouse executed a written document that: (A)  
9       Specifically set forth that his or her genetic material may be used for  
10      the posthumous conception of a child, (B) specifically provided his or  
11      her spouse with authority to exercise custody, control and use of the  
12      genetic material in the event of his or her death, and (C) was signed  
13      and dated by the decedent spouse and the surviving spouse; and

14 (2) The child posthumously conceived using the decedent spouse's  
15 genetic material was in utero not later than one year after the date of  
16 death of the decedent spouse.

17 (b) Upon the death of a decedent spouse who has executed a  
18 document described in subsection (a) of this section, the surviving  
19 spouse shall ensure that a copy of such document is provided to the  
20 fiduciary of the decedent spouse's estate not later than thirty days after  
21 the date of the decedent spouse's death.

22 Sec. 2. Subdivision (1) of subsection (a) of section 45a-341 of the  
23 general statutes is repealed and the following is substituted in lieu  
24 thereof (*Effective October 1, 2013*):

25 (a) (1) An inventory of all the property of every deceased person  
26 and insolvent debtor, except real property situated outside the state,  
27 duly appraised, shall be made and signed under penalty of false  
28 statement by the fiduciary. The inventory shall include any written  
29 document provided to the fiduciary by a surviving spouse pursuant to  
30 the requirements set forth in section 1 of this act.

31 Sec. 3. (NEW) (*Effective October 1, 2013*) If a claim made on behalf of  
32 a child alleges that such child is a beneficiary of a decedent entitled to  
33 property under section 1 of this act, any payment or distribution of  
34 assets by a fiduciary shall be deemed to have been made in good faith  
35 unless the claimant proves that the fiduciary had knowledge of the  
36 child's existence at the time of the payment or distribution of the  
37 assets.

38 Sec. 4. (NEW) (*Effective October 1, 2013*) (a) Except as otherwise  
39 provided in subsection (b) of section 45a-357 of the general statutes  
40 and section 45a-375 of the general statutes, the failure of a person,  
41 acting on behalf of a child who alleges to be a beneficiary of a decedent  
42 entitled to property under section 1 of this act, to present his or her  
43 claim to the fiduciary as prescribed by law, shall not impair such  
44 person's right to maintain an action against the beneficiaries under  
45 section 45a-368 of the general statutes; provided nothing contained in

46 this section shall extend the time limit for the commencement of an  
47 action to enforce such person's claim.

48 (b) Following the final payment or distribution of all assets known  
49 to a fiduciary, any action on an unsatisfied obligation described in  
50 subsection (a) of section 45a-368 of the general statutes shall be  
51 brought against beneficiaries and not against the fiduciary, unless the  
52 plaintiff is seeking to have the fiduciary personally surcharged.

53 Sec. 5. Subsection (a) of section 45a-257b of the general statutes is  
54 repealed and the following is substituted in lieu thereof (*Effective*  
55 *October 1, 2013*):

56 (a) Except as provided in subsection (b) of this section, if a testator  
57 fails to provide in the testator's will for any of the testator's children  
58 born or adopted after the execution of the will, including any child  
59 who is born as a result of artificial insemination to which the testator  
60 has consented in accordance with subsection (b) of section 45a-772 and  
61 any child born after the death of the testator as provided in subsection  
62 (a) of section 1 of this act, the omitted after-born or after-adopted child  
63 receives a share in the estate as follows:

64 (1) If the testator had no child living when the testator executed the  
65 will, an omitted after-born or after-adopted child receives a share in  
66 the estate equal in value to that which the child would have received  
67 had the testator died intestate, unless the will devised or bequeathed  
68 all or substantially all of the estate to the other parent of the omitted  
69 child and that other parent survives the testator and is entitled to take  
70 under the will.

71 (2) If the testator had one or more children living when the testator  
72 executed the will, and the will devised or bequeathed property or an  
73 interest in property to one or more of the then-living children, an  
74 omitted after-born or after-adopted child is entitled to share in the  
75 testator's estate as follows:

76 (A) Except as provided in subparagraph (E) of this subdivision, the

77 portion of the testator's estate in which the omitted after-born or after-  
78 adopted child is entitled to share is limited to devises and legacies  
79 made to the testator's then-living children under the will.

80 (B) The omitted after-born or after-adopted child is entitled to  
81 receive the share of the testator's estate, as limited in subparagraph (A)  
82 of this subdivision, that the child would have received had the testator  
83 included all omitted after-born and after-adopted children with the  
84 children to whom devises and legacies were made under the will and  
85 had given an equal share of the estate to each child.

86 (C) To the extent feasible, the interest granted an omitted after-born  
87 or after-adopted child under this section must be of the same character,  
88 whether equitable or legal, present or future, as that devised or  
89 bequeathed to the testator's then-living children under the will.

90 (D) In satisfying a share provided by this subdivision, devises and  
91 legacies to the testator's children who were living when the will was  
92 executed abate ratably. In the abatement of the devises and legacies of  
93 the then-living children, to the maximum extent possible the character  
94 of the testamentary plan adopted by the testator shall be preserved.

95 (E) If it appears from the will that the intention of the testator was to  
96 make a limited provision which specifically applied only to the  
97 testator's living children at the time the will was executed, the after-  
98 born or after-adopted child succeeds to the portion of such testator's  
99 estate as would have passed to such child had the testator died  
100 intestate.

101 Sec. 6. Subsection (a) of section 45a-438 of the general statutes is  
102 repealed and the following is substituted in lieu thereof (*Effective*  
103 *October 1, 2013*):

104 (a) After distribution has been made of the intestate estate to the  
105 surviving spouse in accordance with section 45a-437, all the residue of  
106 the real and personal estate shall be distributed in equal proportions,  
107 according to its value at the time of distribution, among the children,

108 including children born after the death of the decedent, as provided in  
 109 subsection (a) of section 1 of this act, and the legal representatives of  
 110 any of them who may be dead, except that children or other  
 111 descendants who receive estate by advancement of the intestate in the  
 112 intestate's lifetime shall themselves or their representatives have only  
 113 so much of the estate as will, together with such advancement, make  
 114 their share equal to what they would have been entitled to receive had  
 115 no such advancement been made.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	New section
Sec. 2	October 1, 2013	45a-341(a)(1)
Sec. 3	October 1, 2013	New section
Sec. 4	October 1, 2013	New section
Sec. 5	October 1, 2013	45a-257b(a)
Sec. 6	October 1, 2013	45a-438(a)

**Statement of Legislative Commissioners:**

In section 1(a)(1)(B), "in the event of the death of the other spouse" was changed to "in the event of his or her death" for clarity. In section 2(a)(1), "supplied" was changed to "provided" for consistency and "in compliance with" was changed to "pursuant to" for clarity. In section 3, technical grammatical changes were made for conciseness. In section 4(b), "Following final distribution of all assets known to a fiduciary, any suit" was changed to "Following the final payment or distribution of all assets known to a fiduciary, any action" for conformity with section 3 of this act.

**JUD**      *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

There is no fiscal impact to the state or municipalities from defining the statutory rights of inheritance of certain children born after the death of a married parent.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

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**OLR Bill Analysis****HB 6694*****AN ACT CONCERNING THE INHERITANCE RIGHTS OF A CHILD WHO IS BORN AFTER THE DEATH OF A MARRIED PARENT.*****SUMMARY:**

This bill provides certain inheritance rights to a child conceived and born after the death of one of his or her married parents (i.e., a posthumously conceived child). If the deceased parent had a valid will, the bill gives a posthumously conceived child the same rights the law provides to a child born after a parent's will was executed. If the deceased parent did not have a will (i.e., intestate), the bill includes a posthumously conceived child among the children to whom the residue of an intestate estate must be distributed by law.

To qualify for these rights, the bill requires a written document signed and dated by both parents, specifically authorizing the surviving spouse to use the decedent spouse's genetic material to posthumously conceive a child, who must be in utero within one year of the parent's death.

The bill also allows the representative of a posthumously conceived child to bring an action for an unsatisfied obligation against the other estate beneficiaries within the applicable statute of limitations. It deems any final payment and asset distribution by an estate fiduciary who has no knowledge of the existence of a posthumously conceived child to have been made in good faith.

EFFECTIVE DATE: October 1, 2013

**ELIGIBILITY REQUIREMENTS**

For property distribution purposes, the bill deems a posthumously conceived child to have been born in the decedent spouse's lifetime

and after the execution of his or her will, if the child or his or her representative proves by clear and convincing evidence that:

1. the decedent spouse executed a written document that: (a) specifically authorizes the use of his or her genetic material to posthumously conceive a child, (b) specifically authorizes his or her spouse to exercise custody, control, and use of the genetic material in the event of his or her death, and (c) was signed and dated by the decedent spouse and the surviving spouse and
2. the posthumously conceived child was in utero within one year of the decedent spouse's death.

The bill requires (1) the surviving spouse to provide a copy of this document to the fiduciary of the decedent spouse's estate within 30 days of the death and (2) the fiduciary to include the document in the inventory of the deceased's property required by law.

## **INHERITANCE RIGHTS**

### ***Failure to provide for Children Born or Adopted after the Execution of a Will***

If a parent fails to provide for a child born or adopted after the parent's will was executed, the law entitles the omitted child to a share in the parent's estate under certain circumstances. The bill extends these inheritance rights in the same manner to posthumously conceived children who were not provided for in the deceased parent's will.

Thus, if there were no living children when the will was executed, the posthumously conceived child receives a share in the estate equal to what the child would have received had the parent died intestate, unless the will devised or bequeathed all or substantially all of the estate to the surviving spouse who is entitled to take under the will.

If there were one or more children living when the will was executed, and the will devised or bequeathed property or an interest in property to one or more of the then-living children, the posthumously



conceived child receives the share of the estate that the child would have received had the deceased parent included all omitted after-born and after-adopted children with the children who were provided for under the will and had given an equal share of the estate to each child, subject to certain restrictions (see BACKGROUND).

### ***Intestate Estate***

By law, when a person dies without a valid will (i.e., intestate), after the distribution of the estate has been made to the surviving spouse, the residue of the real and personal estate must be distributed equally among the children, with certain exceptions. The bill includes posthumously conceived children among the children to whom the residue of an intestate estate must be distributed.

### **ACTION AGAINST BENEFICIARIES**

By law, an estate's beneficiary is liable for unpaid expenses for administering the estate, funeral expenses of the decedent, all taxes for which the estate is liable, and claims that were not satisfied from the estate's assets. The bill allows a posthumously conceived child's representative to file an action against the beneficiaries for an unsatisfied obligation to a beneficiary entitled to property. The representative does not have to present the claim to the fiduciary, but must file the action within (1) the optional 90-day notice if given by the fiduciary or (2) the statute of limitations applicable to such a claim under law.

### ***Distribution of Assets by Fiduciary in Good Faith***

Under the bill, if a claim is made for a posthumously conceived child's entitlement to property, any payment or distribution of assets by a fiduciary is deemed to have been made in good faith unless the fiduciary had knowledge of the child's existence at the time the payment was made or the assets were distributed.

### **BACKGROUND**

#### ***Fiduciary***

A fiduciary is an individual, corporation or association holding

assets for another party, often with the legal authority and duty to make decisions regarding financial matters on behalf of the other party. A fiduciary may be an executor, administrator, trustee, conservator, or guardian.

### ***Children Born or Adopted after Execution of Parent's Will***

By law, an omitted child born or adopted after the execution of a parent's will, including any child born as a result of consented artificial insemination, is entitled to a share in the deceased parent's estate, unless the omission was intentional or the omitted child was otherwise provided for. If the will devised or bequeathed property to one or more then-living children, the omitted child's share of the estate:

1. is limited to a share of the portion of the estate made to the then-living children under the will and
2. must be of the same character, whether equitable or legal, present or future, as that devised or bequeathed to the then-living children under the will.

If there are not enough assets to satisfy the provisions of the will, in the abatement of the devises and legacies of the then-living children, the character of the will must be preserved.

If it appears from the will that the intention was to make a limited provision which specifically applied only to the living children at the time the will was executed, the after-born or after-adopted child succeeds to the portion of such testator's estate as would have passed to such child had the testator died intestate.

### ***Related Case***

In *Astrue v. Capato*, 132 S.Ct. 2021 (2012), the U.S. Supreme Court found that twins conceived after their father's death were ineligible for Social Security survivor benefits. The Court agreed with the Social Security Administration that, in order to be eligible for benefits, a person must either qualify as a child of the deceased insured parent under state intestacy laws (the laws governing succession to estates of

those who die without a valid will) or satisfy one of the following statutory alternatives:

1. if the applicant is a son or daughter of an insured deceased individual, but does not qualify as a child under state intestacy law, he or she must demonstrate that both parents went through a marriage ceremony that would have been valid except for certain legal impediments (42 USC § 416(h)(2)(B));
2. the insured deceased parent must have (a) acknowledged in writing that the person is his or her son or daughter; (b) been decreed by a court to be the person's father or mother; or (c) been ordered to pay child support (42 USC § 416(h)(3)(C)(i)); or
3. the person must prove that the insured deceased individual was his or her parent and was living with or contributing to his or her support when the insured individual died (42 USC § 416(h)(3)(C)(ii)).

In this case, the twins could not inherit under the relevant state's intestacy law (i.e. Florida) and could not qualify under the statutory alternatives.

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea     39     Nay   5     (04/19/2013)